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BEFORE THE

SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 35506

WESTERN COAL TRAFFIC LEAGUE – PETITION FOR DECLARATORY ORDER

OPENING COMMENTS OF ALLIANCE FOR RAIL COMPETITION MONTANA WHEAT & BARLEY COMMITTEE COLORADO WHEAT ADMINISTRATIVE COMMITTEE IDAHO BARLEY COMMISSION IDAHO WHEAT COMMISSION MONTANA FARMERS UNION NEBRASKA WHEAT BOARD OKLAHOMA WHEAT COMMISSION SOUTH DAKOTA WHEAT COMMISSION TEXAS WHEAT PRODUCER BOARD WASHINGTON GRAIN COMMISSION NATIONAL ASSOCIATION OF WHEAT GROWERS

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Dated: October 28, 2011

The Alliance for Rail Competition, National Association of Wheat Growers, and the State wheat and barley committees and agricultural commodity interests listed on the cover (hereafter "ARC et al.") welcome the opportunity to comment on issues raised in the Petition for Declaratory Order filed by Western Coal Traffic League on May 2, 2011, and in the STB Decision served September 28, 2011 initiating this proceeding.

The main reason for participation in this proceeding by ARC et al. is to provide the perspective of shippers of agricultural commodities on the issues presented. However, the Board should be aware that ARC's membership also includes coal shippers, including Western Fuels Association, Otter Tail Power Company, and PPL EnergyPlus LLC, as well as shippers of other commodities. Accordingly, ARC et al. state at the outset their general support for the Opening Comments being filed by coal shippers including WCTL, and by other shipper interests in this proceeding. ARC et al. attach hereto the Opening Verified Statement of their witness, G.W. Fauth, III.

As Mr. Fauth points out, the acquisition premium of $7.625 billion paid by Berkshire Hathaway is likely to increase BNSF's 2010 URCS costs by almost 10%, if no action is taken by the Board. Fauth V.S. at 3. This impact will occur even though BNSF has made no investments and incurred no increase in costs that might improve service quality for BNSF's shipper customers.

Mr. Fauth also points out that the acquisition of BNSF by Berkshire Hathaway differs in two ways from earlier instances of Class I railroad acquisitions in which the ICC and STB failed to adjust successor company investment bases to eliminate the acquisition premium. First, the putative rationale for allowing the asset write-up in those prior cases was that any negative cost impacts on captive shippers would be offset or outweighed by positive cost impacts resulting from operating efficiencies, reduced circuity, labor savings, etc. Here, no such positive cost savings can be anticipated because BNSF was not acquired by or merged with another Class I railroad. (Nor have BNSF operating costs increased.)

Second, the ICC and STB in past cases have too often accepted uncritically the projections of efficiency gains that were provided by the railroad applicants, and allowed write-ups based on acquisition premiums in those cases that later proved not to be offset by efficiency gains. In view of the fact that, as noted above, there is no basis for assuming efficiency gains here, the Board should reject arguments by BNSF that past precedents of dubious validity should be followed.

Allowing a BNSF write-up based on the acquisition premium would have significant impacts on STB regulatory jurisdiction, the applicability and effectiveness of STB rate reasonableness standards, and revenue adequacy determinations. For the captive shippers who depend on the Act and the Board for protection against abuses of market power, these impacts are uniformly detrimental, and will also weaken or eliminate any leverage captive shippers might have in negotiations with BNSF.

No doubt BNSF and Berkshire Hathaway and its stockholders would appreciate the windfall they would receive absent any adjustment to eliminate a BNSF cost write-up based on the acquisition premium. But neither BNSF nor Berkshire could have had any legitimate expectation of such a windfall in light of the, at best, equivocal nature of past precedents.

Moreover, allowing such a windfall is likely to encourage acquisitions of other major railroads for amounts in excess of their market capitalization. Indeed, there is a danger that acquiring companies may deliberately drive up the price in order to increase the windfall.

The windfall about which ARC et al. are concerned is the significant increase in BNSF's ability to raise rates on captive shippers with immunity from shipper challenge or STB oversight. And while all captive shippers via BNSF are vulnerable, captive shippers of agricultural commodities are particularly vulnerable.

Though BNSF freight rates may be paid, for the most part, by grain elevators, those freight rates are normally borne by farm producers, which receive less for their grain and other commodities when rail rates rise. The same is often true as to agricultural commodities other than grain. As Mr. Fauth demonstrates, V.S. at 6, grain rates currently set at 180% of BNSF variable cost could be increased by up to $657 per car with no possibility of challenge before the Board. Captive grain elevators and farm producers in states like Montana, North Dakota and other western states generally pay rates well above the Board's jurisdictional threshold, as found by GAO and the Christensen Report.[1] For such rail-dependent customers, there is a danger that BNSF will be able to raise already unreasonable rates with no greater regulatory exposure, solely because of the acquisition premium.

Captive shippers, by definition, have little ability to resist rate increases by market dominant railroads. The option of filing a rate case at the STB has traditionally worked best for large utility coal shippers, though they too have often come away empty handed.

The rate case option, intended by Congress as the primary means of preventing abuses of railroad market power, will be undermined even for large coal shippers if no adjustment for the BNSF acquisition premium is adopted. Some rate cases that might formerly have been viable will not be, and relief in successful rate cases will be curtailed.

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1 See Report GAO-06-98T, at p. 17, and Christensen Report, Volume 1, pages 5-11.

For shippers of agricultural commodities, including both elevators and farmers, these problems will be exacerbated. Most farm producers are simply too small to bring rate cases under Full-SAC or even under Simplified-SAC. Three Benchmark cases are already compromised by excessively low relief caps and by the higher rate levels found reasonable under that methodology. In addition, rates on agricultural commodities paid by elevators and borne by farmers in the northwest are typically tariff rates, due to BNSF's resistance to rail transportation contracts for such products. Accordingly, such protection as contracts may afford to coal shippers is unavailable to shippers of agricultural commodities.

Witness Fauth also explains that, because the BNSF acquisition premium could artificially increase costs and artificially reduce R/VC percentages for all BNSF rates, the adverse impact under Three Benchmark is particularly pernicious. V.S. at 4. The Three Benchmark test is ultimately a form of comparable rates test, and if a potential complainant's rates go up at the same time that likely comparison group rates go up, the result is massive exposure to rate increases encompassing not just entire states but entire multi-state regions.

Progress in enhancing competition among railroads, as called for in Ex Parte No. 705, Competition in the Railroad Industry, could help reduce some captive shippers' exposure to rate increases driven by potential acquisition premium impacts on R/VC percentages.[2] However, there has as yet been no such progress, and even if there were, many captive shippers will remain captive notwithstanding Board action to enhance competition. For many shippers, alternative rail carriers are simply too far away to compete effectively, or have no interest in competing effectively. As detailed in the ARC comments filed April 12 and May 27, 2011 in Ex Parte No.

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[2] See Also the Petition of National Industrial Transportation League for Rulemaking to Adopt Revised Competitive Switching Rules, filed July 7, 2011 in Ex Parte No. 711.

705, these problems are particularly acute for shippers of agricultural commodities in the West, many of whom are subject to BNSF market dominance.

For such shippers, and for shippers of other commodities who lack access to real competitive alternatives to BNSF, the Board has two choices. It can adjust BNSF costing to eliminate the write-up due to the acquisition premium, or it can attempt to modify its rate case methodologies to ensure that the acquisition premium is recovered, if at all, from non-captive shippers.

Of these two options, the first is far simpler and easier to accomplish. In view of the absence of any valid precedent <u>for</u> allowing BNSF a write-up reflecting the acquisition premium, Board action to disallow such a write-up is all the more necessary.

For the foregoing reasons, BNSF costing for STB regulatory purposes must not reflect any write-up based on the acquisition premium paid by Berkshire Hathaway.

Respectfully submitted,

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Dated: October 28, 2011

BEFORE THE

SURFACE TRANSPORTATION BOARD

STB DOCKET NO. FD 35506

WESTERN COAL TRAFFIC LEAGUE -

PETITION FOR DECLARATORY ORDER

VERIFIED STATEMENT
OF
GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc., an economic consulting firm with offices at 116 South Royal Street, Alexandria, Virginia 22314. A statement describing my background, experience and qualifications is attached hereto as Appendix GWF-1.

I have been asked to submit these comments in this proceeding by the Alliance for Rail Competition, Montana Wheat & Barley Committee, Colorado Wheat Administrative Committee, Idaho Barley Commission, Idaho Wheat Commission, Montana Farmers Union, Nebraska Wheat Board, Oklahoma Wheat Commission, South Dakota Wheat Commission, Texas Wheat Producer Board, Washington Grain Commission, and National Association of Wheat Growers. These comments concern the potential economic impacts associated with the write-up in BNSF Railway Company's net investment base attributable to the difference between the book value and the price that Berkshire Hathaway Inc. (Berkshire) paid to acquire BNSF in 2010.

On February 12, 2010, Berkshire acquired BNSF for an aggregate $34.5 billion purchase price. BNSF subsequently submitted to the Surface Transportation Board (STB) its 2010 Class I Railroad Annual Report (2010 R-1), which reflected certain accounting changes associated with the Berkshire transaction. Western Coal Traffic League (WCTL) states that BNSF's 2010 R-1 produces a write-up in BNSF's net investment base for Uniform Railroad Costing System (URCS) costing purposes equal to $7,625,000,000, which increases BNSF's pre-acquisition net investment base by 30% and affects BNSF's 2010 annual depreciation calculations.

The $7.625 billion increase in BNSF's investment base will increase BNSF's 2010 URCS return on investment (ROI) by approximately $1.25 billion,[1] which, along with the associated depreciation expenses,[2] will be spread throughout BNSF's various 2010 URCS unit costs components (e.g. gross-ton-mile, locomotive unit-mile, etc.). These inflated URCS unit cost components will then be allocated to individual BNSF movements via the various service units (e.g., miles, cars per shipment, tons per car) required for URCS variable cost determinations, which are utilized in STB jurisdictional threshold determinations (i.e., a revenue-to-URCS variable cost (R/VC) percentage of 180%).

Parties will not be able to determine the actual impact on STB's BNSF 2010 URCS unit costs resulting from the Berkshire's $7.625 billion acquisition premium until the STB releases its BNSF 2010 URCS calculations (which the STB could have done in advance of this comment

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[1] $7.625 billion x 16.39% cost of capital. In STB Ex Parte No. 558 (Sub-No.-14), the STB determined that the 2010 after-tax current cost of capital was 11.03%. The 16.39% represents the *pre-tax* current cost of capital, which is used in the STB's URCS calculations.

[2] WCTL's Attachment No. 2 indicates that BNSF's 2010 annual depreciation actually declined by $49 million as a result of the Berkshire acquisition premium, but, with the increased and adjusted investment base, it is likely that annual depreciation will increase in future annual reports.

period). However, it is clear that BNSF's 2010 URCS costs *will increase* as a result of this write-up.

I have been asked to estimate the impact of the Berkshire acquisition premium on individual BNSF railroad grain movements. BNSF dominates the railroad grain market, especially the longer-haul export grain market from large parts of the grain belt. Indeed, BNSF touts that it is the "largest grain-hauling railroad in North America."[3]

Since BNSF dominates many areas of the railroad grain market and thus could have its grain rates subject to STB jurisdiction, BNSF plays close attention to its STB URCS costs and resulting R/VC percentages associated with its railroad grain market.[4] In many BNSF captive grain markets, such as the export grain to the Pacific Northwest (PNW), the rates set by BNSF generate R/VC percentages at, near or above the STB's jurisdictional level of 180%.

As BNSF's URCS costs increase, there will be a concomitant decrease in BNSF's R/VC percentages, which will enable BNSF to impose significant rate increases that will be immune from regulatory challenge. As indicated herein, I estimate that BNSF's 2010 URCS costs will increase by 9.59% as a result of the Berkshire acquisition premium. In effect, the acquisition premium will raise the BNSF's jurisdictional threshold from 180% to nearly 200%, which is shown in the following table:

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[3] http://www.bnsf.com/customers/what-can-i-ship/grains-feed/

[4] This appears to have been especially true since the STB adopted its "unadjusted" URCS in 2007. See STB Ex Parte No. 646 (Sub-No.1), Simplified Standards for Rail Rate Cases, served September 5, 2007.

Table 1

Estimated Impact on BNSF's
STB Jurisdictional Threshold

Ln.	Item	Amount
1	Variable Cost	$1,000
2	Rate at 180% (L.1 x 1.80)	$1,800
3	Variable Cost with Berkshire Premium (L.1 x 1.0959)	$1,096
4	Rate at 180% (L.3 x 1.80)	$1,973
5	Rate Increase at 180% (L.4 minus L.2)	$173
6	New Effective Jurisdictional Threshold (L.5 / L.1)	197%

Under some STB rate case approaches, BNSF rate increases may be effectively immune from challenge even if they produce R/VC percentages well in excess of 180%. For example, under the STB's Three Benchmark approach adopted in 2007 for small rate cases, the comparison group used to establish a reasonable rate would be comprised of comparable BNSF traffic above 180% and then the comparison group R/VC (which will be >180%) is marked up by BNSF's railroad RSAM/R/VC>180 ratio.[5] BNSF's current RSAM/R/VC>180 ratio is 1.0614 (242%/228%).[6] The theoretical minimum BNSF R/VC percentage under STB's Three-Benchmark approach (which can never be achieved) would be 191% (180% x 1.0614). Therefore, even BNSF grain traffic with high R/VC percentages can expect rate increases if the acquisition premium is included in BNSF's 2010 and future URCS calculations.

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[5] See STB Ex Parte No. 646 (Sub-No.1), served September 5, 2007.

[6] See STB Ex Parte No. 689 (Sub-No.2), Simplified Standards For Rail Rate Cases - 2009 RSAM and R/VC>180 Calculations, served July 14, 2011.

In order to estimate the impact of the Berkshire acquisition premium on individual BNSF railroad grain movements, I have used the STB's BNSF's 2009 URCS data, which is the most current available, and indexed the resulting 2009 URCS costs to a 2010 level by the STB's indexing procedures. An adjustment was made to the STB's indexing procedures to reflect the Berkshire acquisition premium. BNSF's indexed 2009 URCS variable costs and STB jurisdictional threshold rate levels were developed for range of grain shipments moving: 500, 750, 1,000 and 1,250 miles and in shipment sizes of 1, 24, 48 and 110 cars.

I have adjusted the 2009 URCS ROI level which is used in STB's indexing procedures to reflect the $7.625 billion increase in BNSF investment base. I have made an adjustment to the 2009 depreciation level to reflect the slight reduction in depreciation and have also increased the 2009 current cost of capital to the 2010 level, which was recently released by the STB.[7] The 2010 index (i.e., update ratio required to increase BNSF's 2009 URCS costs to a 2010 level) using STB's procedures is 1.06840. By increasing BNSF's ROI and changing the depreciation level to reflect the Berkshire transaction, this update ratio increases to 1.17085. This represents an increase of 9.59%.

The following table shows the potential increase of jurisdictional rate levels on a per car basis for grain shipments moving 500, 750, 1,000 and 1,250 miles and in shipment sizes of 1, 24, 48 and 110 cars:

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[7] The 2009 pre-tax current cost of capital used in STB's 2009 URCS calculations was 15.15%. The 2010 current cost of capital is 16.39%. A significant portion of this increase can be directly attributable to the Berkshire transaction. Since BNSF is no longer a private company, the STB has removed BNSF (one of, if not the, largest Class I railroad) from its current cost of capital determinations, which has obviously impacted, if not skewed, the STB's 2010 cost of capital calculation.

Table 2

Estimated Impact Associated With Berkshire Hathaway's BNSF Acquisition Premium On BNSF STB Jurisdictional Grain (STCC 01-13) Rates Per Car Moving In Various Shipment Sizes And Distances

Ln.	Mileage	1 Car	24 Cars	48 Cars	110 Cars
1	500 Miles	$359	$229	$229	$147
2	750 Miles	$458	$328	$328	$209
3	1,000 Miles	$557	$427	$427	$271
4	1,250 Miles	$657	$527	$527	$334

As can be seen, the estimated increases in the STB jurisdictional rates levels for BNSF grain shipments, which range from $147 to $657 per car, can be significant, especially for longer haul, non-shuttle (< 110 cars) grain movements. Additional detail is provided in Appendix GWF-2.

The actual impact on the rates of individual movements will vary depending on STB's final 2010 URCS calculations and other factors, such as level of BNSF shipper captivity, but it is very likely that captive BNSF grain shippers could see significant rate increases, many of which could not be challenged at the STB.

BNSF asserts that the STB, Interstate Commerce Commission (ICC), the Railroad Accounting Principles Board, and the courts have repeatedly determined in past cases that acquisition cost is an economically accurate measure of current market value and have previously allowed for the inclusion of acquisition values in railroad investment bases.

Assuming BNSF's assertion is true, this case is very different from past Class I railroad merger cases.

Past STB and ICC decisions allowing merger and acquisition premiums to be paid (and, in effect, to be passed through to captive customers) have been based on the rationale that any potential adverse impact on rates associated with the acquisition premium will be more than offset by merger synergies and benefits (e.g., elimination of interchange costs, reduction in crew and equipment costs, improved operations, etc.) that shippers will receive as a result of the transaction. In every large railroad transaction, the railroads involved have claimed many synergies and other merger benefits. In theory, such merger benefits could help offset the post-merger increases in the book values of the assets.[8] However, there are no such related and potentially offsetting synergies or acquisition benefits here.

There is a big difference between previous railroad mergers and the recent Berkshire/ BNSF transaction. Since the Berkshire/BNSF transaction was not a merger between railroads: (1) it did not require STB approval; and (2) there are no transportation synergies and minimal, if any, other acquisition benefits that could be passed on to shippers which could help offset the adverse impact of the $7.625 billion acquisition premium.

Past Class I railroad cases have involved railroad mergers and transactions involving two or more railroads and any acquisition premiums were spread throughout the newly-established railroad systems (e.g., UP/SP, BN/ATSF, Conrail/CSX/NS, etc.). In these prior Class I merger

[8] In reality, past Class I railroad mergers and acquisitions have often led to service failures (unlikely here), higher costs (likely here) and higher rates (likely here). It appears that assumptions in prior proceedings did not square with the results. Moreover, other agencies, such as the Federal Energy Regulatory Commission (FERC), require the merging or acquiring entities to provide certain benefits (such as rate reductions) to obtain approval of any premiums paid, but the STB has never required such benefits.

cases, new economic synergies were created as a result of the mergers or transactions which could, in theory, offset any increase in the investment base that may have emanated from the payment of acquisition premiums.

There are no potentially offsetting synergies or acquisition benefits here. On the contrary, allowing BNSF to write-up its net investment base would have the anomalous effect of allowing Berkshire to recover the acquisition premium virtually risk-free through unchallengeable BNSF rate increase on captive shippers. The greater the premium paid, the greater the benefit, which will, in the future, encourage other acquisitions for premiums above market capitalization.

Without STB intervention and correction of BNSF's URCS costs, BNSF's 2010 and future URCS costs will increase which will translate into higher rates on grain and other captive shippers.

VERIFICATION

ALEXANDRIA, VIRGINIA)
) SS.

I, Gerald W. Fauth III, verify that: I have read the foregoing statement; I know the contents thereof; and those contents are true and correct as stated.

Gerald W. Fauth III

Subscribed and sworn to me this 27th day of October, 2011

Notary Public

WILSON WATTS NASH
COMMONWEALTH OF VIRGINIA
NOTARY PUBLIC

Wilson Watts Nash
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #7343675
My Commission Expires
February 28, 2014

My Commission expires:
February 27th, 2014

STATEMENT
OF
BACKGROUND, QUALIFICATIONS AND EXPERIENCE
OF
GERALD W. FAUTH III

My name is Gerald W. Fauth III. I am President of G. W. Fauth & Associates, Inc. (GWF), an economic consulting firm with offices at 116 S. Royal Street, Alexandria, Virginia 22314. I a recognized expert on transportation issues with over 30 years experience in the private sector and in the Federal government.

This statement generally describes my background, qualifications and experience. The majority of experience has involved economic, regulatory, public policy and legislative issues primarily associated with, or related to, the U. S. railroad industry. Most of my work has involved regulatory proceedings and related projects before, or related to, the U.S. Surface Transportation Board (STB) and its predecessor, the Interstate Commerce Commission (ICC). I have extensive experience in working in regulatory and other proceedings and projects involving railroad mergers, transactions, acquisitions, abandonments, rate reasonableness and other railroad related issues. These matters have involved railroad issues on a nation-wide, system-wide and individual railroad line basis.

GWF has been engaged in the economic consulting business for over 50 years. My part time affiliation with GWF began in 1972. I began working for GWF on a full-time basis on May 15, 1978 and was employed by GWF continuously until November 1, 1999 at which time I took a leave of absence in order to take a position with the STB. At the STB, I served as Chief of Staff for one of the three Board Members appointed by the President, Vice Chairman Wayne O. Burkes. I returned to GWF and consulting work effective June 23, 2003 after Mr. Burkes resigned his position to run for a political office.

Over the years, I have submitted expert testimony before ICC, STB, state regulatory commissions, courts and arbitration panels on a wide-variety of issues in numerous proceedings. In addition, I worked for 3½ years at the STB where I reviewed, analyzed and made recommendations on over 600 written formal decisions that were decided by the entire Board. These proceedings involved all matters of STB jurisdiction and had an impact on the transportation industry and the national economy.

Railroad transactions have long been the subject of ICC and STB regulatory proceedings and other matters involving: railroad merger and acquisition approval and oversight proceedings; railroad line abandonment proceedings; line sales; feeder line application proceedings; and other railroad transaction-related proceedings. I have been involved in numerous such proceedings and projects as an expert witness and as an STB staff advisor.

I was an expert witness in the last two major Class I railroad merger proceedings: STB Finance Docket No. 32760, Union Pacific Corporation, et al. – Control and Merger – Southern Pacific Rail Corporation, et al. and STB Finance Docket No. 33388, CSX Corporation, et al., Norfolk Southern Corporation, et al. – Control and Operating Leases / Agreements – Conrail, Inc., et al.. My testimony in these major merger proceedings concerned the potential adverse competitive impact of these mergers on two key areas.

In addition to my work in major railroad merger proceedings, I have submitted expert testimony in other railroad finance docket and abandonment proceedings before the ICC and STB. In these proceeding, I have developed and submitted evidence relating to the valuation and economics of the railroad line at issue, such as: going concern and net liquidation values; freight revenues and traffic; operating costs; maintenance costs: right-of-way valuation; etc.

In addition to my testimony in merger and other rail transaction proceedings, I served as an original member of the Conrail Transaction Council, which was established by the Board in Finance Docket No. 33388. This council consisted of representatives of the CSX, NS and shipper organization and provided a forum for timely and efficient communication of information and problems concerning the transaction. I was one of the original members of the Conrail Transaction Council and attended every meeting of the council until my employment with the Board.

During my time at the Board, I was actively involved in the STB merger oversight proceedings associated with the UP/SP and Conrail transactions. Perhaps the most significant merger-related proceedings that I was involved in during my time at the Board were STB Ex Parte No. 582, Public Views on Major Rail Consolidations and STB Ex Parte No. 582 (Sub-No.1), Major Rail Consolidation Procedures. These STB major rulemaking proceedings involved extensive oral hearings and written testimony from hundreds of witnesses. The Board concluded that its existing rules governing railroad mergers and consolidations, which had been developed nearly 20 years earlier, were not adequate for addressing the broad concerns expressed and initiated a major rulemaking proceeding which resulted in a major revision to the Board's rules.

I have a significant amount of experience in issues involving railroad rate reasonableness. I was actively involved in the initial ICC regulatory proceedings over 25 years ago in which the ICC first proposed and established guidelines which have since evolved into the STB's current railroad rate reasonableness guidelines. I was actively involved in several of the first cases to test the ICC's then proposed guidelines. For example, I was the primary expert witness in ICC Docket No. 40073, South-West Railroad. Car Parts Co. v. Missouri. Pacific Railroad, which was the *first* case to test the ICC's proposed simplified guidelines, which are now known as the STB's Three-Benchmark approach. More recently, I submitted extensive written and oral testimony in STB Ex Parte No. 646 (Sub-No. 1), Simplified Standards For Rail Rate Cases, on behalf of a group of 30 major stakeholders and my testimony was cited by the Board in its decision served September 5, 2007. My work and testimony in these proceedings has helped shape the STB's current railroad rate reasonableness guidelines.

Proceedings before the Board often involve traffic and market analyses using the Board's Waybill Sample, which is a computer database of approximately 600,000 records of sampled railroad movements. I am extremely familiar with this database. Over the years, I have performed hundreds of analyses using this data which has been used as evidence in merger and other proceedings before the Board.

Many of our projects have involved the development of railroad variable cost analyses based on the application of URCS and its predecessor, Rail Form A (RFA). URCS is used to determine STB jurisdiction and is an integral component of the STB's Full-SAC method, new Simplified-SAC standard and recently modified Three-Benchmark approach. I have an extensive working knowledge of the development and application of URCS and RFA. I have prepared URCS cost analyses for thousands of individual railroad movements. I also submitted expert testimony in ICC Ex Parte No. 431 (Sub-No.1), Adoption of the Uniform Railroad Costing System as a General Purpose

Costing System for Regulatory Costing Purposes and more recently in STB Ex Parte No. 431 (Sub-No. 3), Review of the Surface Transportation Board's General Costing System.

I am a 1978 graduate of Hampden-Sydney College in Hampden-Sydney, Virginia where I earned a Bachelor of Arts degree. My major areas of study were history and government. My senior paper in college dealt with the History of Railroad Deregulation. I am a 1974 graduate of St. Stephen's School for Boys (now St. Stephen's and St. Agnes School), located in Alexandria, Virginia. My senior project and paper in high school dealt with the ICC and the Energy Crisis of 1973.

My professional memberships included the Transportation Research Forum and the Association of Transportation Law Professionals.

ESTIMATED IMPACT ASSOCIATED WITH
BERKSHIRE HATHAWAY'S BNSF ACQUISITION PREMIUM ON BNSF URCS COSTS AND
STB JURISDICTIONAL GRAIN (STCC 01-13) RATES IN VARIOUS SHIPMENT SIZES AND DISTANCES

		500 Miles				750 Miles				1,000 Miles				1,250 Miles			
Ln.	Item	1 Car	24 Cars	48 Cars	110 Cars	1 Car	24 Cars	48 Cars	110 Cars	1 Car	24 Cars	48 Cars	110 Cars	1 Car	24 Cars	48 Cars	110 Cars
1	Cars Per Shipment	1	24	48	110	1	24	48	110	1	24	48	110	1	24	48	110
2	Tons Per Car	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110	110
3	Miles	500	500	500	500	750	750	750	750	1,000	1,000	1,000	1,000	1,250	1,250	1,250	1,250
	2009 BNSF URCS																
4	2009 URCS Variable Cost Per Car	$1,946.80	$1,242.46	$1,242.37	$794.99	$2,484.59	$1,780.25	$1,780.17	$1,133.57	$3,022.38	$2,318.04	$2,318.04	$1,472.15	$3,560.17	$2,855.83	$2,855.83	$1,810.73
5	STB Jurisdictional Threshold	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%	180%
6	STB Jurisdictional Rate Per Car at 180%	$3,504.24	$2,236.43	$2,236.27	$1,430.98	$4,472.26	$3,204.45	$3,204.31	$2,040.43	$5,440.28	$4,172.47	$4,172.47	$2,649.87	$6,408.31	$5,140.49	$5,140.49	$3,259.31
	Estimated 2010 BNSF URCS Cost and STB Jurisdictional Rate Level Without Berkshire Acquisition Premium																
7	2010 STB BNSF Index 1/	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840	1.06840
8	2010 STB URCS Variable Cost Per Car (L.4 x L.7)	$2,079.96	$1,327.44	$1,327.35	$849.37	$2,654.54	$1,902.02	$1,901.93	$1,211.11	$3,229.11	$2,476.59	$2,476.59	$1,572.85	$3,803.69	$3,051.17	$3,051.17	$1,934.58
9	Rate Per Car at 180% (L.8 x L.5, 1.80)	$3,743.93	$2,389.39	$2,389.23	$1,528.87	$4,778.17	$3,423.64	$3,423.47	$2,180.00	$5,812.40	$4,457.86	$4,457.86	$2,831.13	$6,846.64	$5,492.11	$5,492.11	$3,482.24
10	Rate Increase Per Car 2009 to 2010 (L.9 minus L.6)	$239.69	$152.96	$152.96	$97.89	$305.91	$219.19	$219.16	$139.57	$372.12	$285.39	$285.39	$181.26	$438.33	$351.62	$351.62	$222.93
	Estimated 2010 BNSF URCS Cost and STB Jurisdictional Rate Level With Berkshire Acquisition Premium																
11	2010 STB BNSF Index 2/	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085	1.17085
12	2010 STB URCS Variable Cost Per Car (L.4 x L.11)	$2,279.41	$1,454.73	$1,454.63	$930.81	$2,909.08	$2,084.41	$2,084.31	$1,327.24	$3,538.75	$2,714.08	$2,714.08	$1,723.67	$4,168.43	$3,343.75	$3,343.75	$2,120.09
13	Rate Per Car at 180% (L.12 x L.5, 1.80)	$4,102.94	$2,618.51	$2,618.33	$1,675.46	$5,236.34	$3,751.94	$3,751.76	$2,389.03	$6,369.75	$4,885.34	$4,885.34	$3,102.61	$7,503.17	$6,018.75	$6,018.75	$3,816.16
14	Rate Increase Per Car 2009 to 2010 (L.13 minus L.6)	$598.70	$382.08	$382.06	$244.48	$764.08	$547.49	$547.45	$348.60	$929.47	$712.87	$712.87	$452.74	$1,094.86	$878.26	$878.26	$556.85
	Estimated Increase in STB Jurisdcitional Rate Level As A Result of Berkshire Acqusition Premium																
15	Difference (L.14 minus L.10)	$359.01	$229.12	$229.10	$146.59	$458.17	$328.30	$328.29	$209.03	$557.35	$427.48	$427.48	$271.48	$656.53	$526.64	$526.64	$333.92

FOOTNOTES:

1/ **STB Indexing Procedure for Updating BNSF 2009 URCS to a 2010 Level**

Ln.	Expense Category	Base Year Expenses	2009	2010	Index	Indexed
1	Wages (incl T&E)	$2,453,402	421.8	413.7	0.98080	$2,406,297
2	Wage Supplements less Unemployment Insurance	$939,459	612.5	657.3	1.07314	$1,008,171
3	Materials & Supplies	$461,306	372.0	355.3	0.95511	$440,598
4	Fuel	$2,262,792	492.4	659.0	1.33834	$3,028,385
5	Other Indexable Expenses	$3,323,238	172.9	184.7	1.06825	$3,550,049
6	Non-Indexable Expenses	$1,575,656	100.0	100.0	1.00000	$1,575,656
7	Return-on-Investment (ROI)	$3,505,288	100.0	100.0	1.00000	$3,505,288
8	TOTAL	$14,521,141			1.06840	$15,514,444

2/ **STB Indexing Procedure for Updating BNSF 2009 URCS to a 2010 Level with Return on Investment (ROI) and Depreciation Adjusted to Reflect Impact of Berkshire Acqusition Premium**

Ln.	Expense Category	Base Year Expenses	2009	2010	Index	Indexed
1	Wages (incl T&E)	$2,453,402	421.8	413.7	0.98080	$2,406,297
2	Wage Supplements less Unemployment Insurance	$939,459	612.5	657.3	1.07314	$1,008,171
3	Materials & Supplies	$461,306	372.0	355.3	0.95511	$440,598
4	Fuel	$2,262,792	492.4	659.0	1.33834	$3,028,385
5	Other Indexable Expenses	$3,323,238	172.9	184.7	1.06825	$3,550,049
6	Non-Indexable Expenses *	$1,575,656	100.0	100.0	0.96890	$1,526,656
7	Return-on-Investment (ROI) *	$3,505,288	100.0	100.0	1.43838	$5,041,926
8	TOTAL	$14,521,141			1.17085	$17,002,082
9	Percent Increase				9.59%	

* BNSF 2009 URCS ROI was adjusted to reflect 2010 Current Cost of Capital (16.39%) and to include $7.625 billion acquisition premium (($23,137,206,000 + $7,625,000,000) x .1639)
BNSF 2010 Depreciation expense was reduced by $49,000,000 (Per WCTL Attachment 2)